**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.K.DENESAN**

**WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928**

**WP(C).No. 2848 of 2007(L)**

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**PETITIONER:**

**P.P. VARGHESE,**
**SUB ENGINEER, ELECTRICAL SECTION, KERALA STATE ELECTRICITY BOARD, PUTHUPPALLY, KOTTAYAM DISTRICT.**

**BY ADV. SRI.N.SUKUMARAN**
**SRI.S.SHYAM**
**SRI.N.K.KARNIS**
**SMT.PARVATHY ANIL**

**RESPONDENTS:**

1. **KERALA STATE ELECTRICITY BOARD,**
   **REPRESENTED BY ITS SECRETARY, VYDHYUTHI BHAVAN,**
   **PATTOM, THIRUVANANTHAPURAM.**

2. **CHIEF ENGINEER (HRM),**
   **KERALA STATE ELECTRICITY BOARD,VYDHYUTHI BHAVAN,**
   **PATTOM, THIRUVANANTHAPURAM.**

3. **DEPUTY CHIEF ENGINEER,**
   **ELECTRICAL CIRCLE, KERALA STATE ELECTRICITY BOARD,**
   **KOTTAYAM.**

4. **EXECUTIVE ENGINEER,**
   **ELECTRICAL DIVISION,KERALA STATE ELECTRICITY BOARD**
   **PALLAM, PAKKIL P.O., KOTTAYAM.**

**BY SHRI.K.S.ANIL, SC, KSE BOARD.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

K.K.DENESAN, J.

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WP(C).No.2848 OF 2007-L.

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Dated this the 24th day of January, 2007.

J U D G M E N T

Heard Shri.N.Sukumaran, Senior Advocate appearing for the petitioner and the Legal Liaison Officer Shri.K.S.Anil for the respondent Board. Ext.P1 is the proceedings issued by the respondent - Board promoting as many as 62 Sub Engineers (Ele.) to the post of Asst.Engineers (Ele.). Petitioner is included against Sl.No.50. Ext.P1 shows that his promotion is withheld. Towards the end of Ext.P1 order, it is stated that promotions ordered are provisional and in the exigencies of service and in public interest.

2. Indisputably and as specifically referred to in Ext.P1 itself, provisional promotions have taken place under Rule 31(a)(i) of K.S. & S.S.R. Reason for withholding the provisional promotion of the petitioner is the pendency of disciplinary proceedings against him. Legal Liaison Officer appearing for the respondent - Board seeks to sustain Ext.P1 contending that the petitioner does not have a blemishless record of service.

3. Heard both sides. Rule 31(a)(i) of K.S. & S.S.R. enables the appointing authorities to make promotions to

meet emergent situations and to fill up vacancies in the higher posts by qualified persons in the feeder categories. The rule specifically says that when promotions are granted to feeder category members under that rule, persons who are admittedly seniors also shall be promoted, provided, they are fully qualified. The only exception envisaged in the rule is one relating to an officer/employee who is under suspension. Therefore, mere pendency of disciplinary proceedings or the fact that disciplinary proceedings were taken, cannot be good reason to withhold the promotion of a senior member of the feeder category who is fully qualified for the post. As per rules, penalty of withholding of promotion is a distinct penalty which can be imposed in appropriate cases. The appointing authority cannot indirectly do something which he cannot do directly. Hence, an employee on whom the penalty of withholding of increment alone has been inflicted cannot be denied his right for promotion ordered under Rule 31(a)(i) of K.S. & S.S.Rs.

4. I have taken a similar view while issuing orders in WP(C).No.24963 of 2005. That order was taken in appeal by the Kerala State Electricity Board. Division Bench affirmed the order vide judgment in W.A.No.2362/2005.

**5. In the light of the above, this writ petition is allowed. There shall be an order directing the respondents to promote the petitioner provisionally as Asst.Engineer, based on Ext.P1 order, forthwith. In any event, the posting orders shall be issued within two weeks from the date of receipt of a copy of this judgment.**

**K.K.DENESAN, JUDGE.**

kvs/-